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OFFICE OF PETITIONS

In re Application of :
Peart et al. : DECISION GRANTING
Application No. 10/759,280 : PETITION
Filed: 20 January, 2004 :
Attorney Docket No. 02940086CA :

This is a decision on the petition styled under 37 CFR 1.181 and 1.183, filed on 22 June, 2004, which is treated as a petition requesting that the above-identified application, without drawings, be accorded a filing date of 20 January, 2004.

The application was filed on 20 January, 2004, without drawings.¹ Accordingly, on 22 April, 2004, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that no filing date had been assigned because the application was deposited without drawings, and requiring drawings be filed if necessary.

In response, on 22 June, 2004, petitioners filed the present petition, accompanied by eight (8) sheets of drawings. Petitioners concede that the drawings were inadvertently omitted when the present application was filed, but state that the drawings were present in a prior-filed application incorporated by reference in the present application.

It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).² A review of the record reveals that Claims 1-19 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention.

¹35 U.S.C. § 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

²MPEP 601.01(f).

Accordingly, the application, as filed, is entitled to a filing date.

The petition is granted. Since the petition was necessitated by an error on the part of the USPTO, the petition fee submitted on 22 June, 2004, will be credited to counsel's deposit account, No. 50-2041.

The "Notice of Incomplete Nonprovisional Application" mailed on 22 June, 2004, was sent in error and is hereby vacated.

The application will be processed and examined using only the application papers filed on 20 January, 2004. The eight (8) sheets of drawings filed with the present petition will not be used for processing or examination, but will be retained in the application file.

Obviously, in view of the incorporation by reference of the prior application, the eight (8) sheets of drawings are not new matter if they were a part of the disclosure of the prior application.

Petitioners should file the eight (8) sheets of drawings as a preliminary amendment. If the eight (8) sheets of drawings are filed as a preliminary amendment, they will be reviewed by the examiner for new matter.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 20 January, 2004, using only the application papers present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703.308.6918.



Douglas I. Wood
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